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April 13, 2020

Green Mountain Care Board
144 State Street
Montpelier, VT 05601
Transmitted electronically

Re: Northwestern Medical Center Emergency Department Modernization Project CON
Docket No. GMCB-003-19

Dear Green Mountain Care Board,

Disability Rights Vermont (DRVT) is an independent, private, nonprofit agency mandated by federal law to protect and advance the rights of individuals with disabilities. See Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 et seq; 42 C.F.R. Part 51 et seq; Protection and Advocacy of Individual Rights, 29 U.S.C. § 794(e) et seq, 34 C.F.R. Part 381 et seq. Additionally, DRVT is the State's Mental Health Care Ombudsman pursuant to 18 V.S.A. §7529. DRVT files this submission as Amicus Curiae pursuant to the Green Mountain Care Board's order in the Northwestern Medical Center Emergency Department Certificate of Need process.

Due to the COVID-19 pandemic, DRVT regrets there was no ability to confer with NMC in detail to resolve concerns before the GMCB has to make their final decision. However, DRVT believes these issues are very amenable to a resolution. Amicus Curiae urges the Board to issue the NMC CON with conditions so as not to delay or derail the laudable process of renovating and improving the NMC ED, while still obtaining an end result that satisfies the CON criteria.

During the instant CON process DRVT, the Department of Mental Health (DMH) and other stakeholders in Vermont's mental health system of care identified areas of significant concern with the proposed design and implementation plan offered by NMC. Both DMH and DRVT provided the Board and NMC written statements identifying the

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On the web: www.disabilityrightsvt.org

issues of concern and suggesting how the application or CON could be amended to mitigate or allay those concerns. GMCB asked NMC to respond to the issues raised by the DMH and DRVT, however NMC's response did not provide adequate assurances that the issues raised by DMH and DRVT would be effectively addressed without further intervention by the Board.

The GMCB has the authority and jurisdiction to respond to the issues that brought by several entities including DRVT. *See In re MVP Health Insurance Co.*, 2016 VT 111(2016). Moreover, the Board's own rules require it to determine if the proposal will "...ensure the provision of high quality services and resources, and ensure access to and equitable allocation of such facilities..." *See* Green Mountain Care Board Rule 4.000 §4.102. Of primary importance in this case, CONs must be issued for projects that benefit "...the public good..." and that "support equal access to appropriate mental health care that meets standards of quality, access and affordability equivalent to other components of the health care as part of an integrated, holistic system of care, as appropriate." 18 V.S.A. §9437(9).

Based on these authorities, DRVT asserts the Board has the duty and the authority to grant the instant CON with conditions implementing effective responses to the concerns raised here in. *See also* 18 V.S.A. Sec. 9440(d)(4).

Regarding the concern about the mental health unit of the proposed ED being locked, NMC has asserted that the doors to the unit itself will be lockable, but will not automatically be locked. Unfortunately, that response does not fully answer the question as to when will the doors into the unit be locked. Instead of identifying a policy as to when the doors into the mental health section of the new ED would be locked, NMC provided their 'Seclusion' and 'Restraint' policies. Use of seclusion or restraint is generally acknowledged to require a clinician's assessment that without the use of force (restraint/seclusion) imminent and serious harm to the patient or others would likely occur. Yet, in their response NMC asserts that they may lock the doors to the mental health unit if "patients ... pose a security risk...". DRVT points out that there is a difference between a clinical judgment that a particular patient requires seclusion or restraint to be safe and a determination to lock an entire ED Unit housing multiple patients. NMC's response continues to be silent on this concern and fails to clarify how they intend to use the capability to lock the doors into the new mental health unit without violating the rights of voluntary patients to leave the unit. NMC asserts an active shooter may be a good reason to lock the doors, but that would require locking people out of the unit, not locking them in, and is not relevant to the concerns on this

issue raised by DMH and DRVT regarding preventing the use of the locking unit entry doors from violating the rights of voluntary patients.

We suggest that the CON being granted if conditioned upon NMC providing an acceptable policy on how they will utilize the locking unit-entry doors, including assurances that no voluntary patient is locked in the unit unless they have provided informed consent or a clinician has documented an imminent risk of serious harm to self or others that could not be reasonably addressed with less coercive means, such as assigning a one on one staff person to observe and intervene in case of dangerous behavior.

Regarding the issue of a community/meeting space in the mental health unit of NMC's proposed ED, DRVT asserts that all stakeholders agree that it is in the best interest of the patient that awaits mental health treatment to have access to a communal space where they can get out of their examination room and meet with visitors, peer advocates, mental health professionals, legal advocates, and others. Unlike other types of medical conditions that bring people to the ED, people presenting with mental health-related conditions require this type of access and environment as part of their care. This need is acknowledged by the DMH Rights of a Patient in Custody, that provide such individuals have a right to access to a support person and to meet with legal advocates such as DRVT or the Mental Health Law Project. See [18 V.S.A. § 7508 \(e\)\(3\)](#).

In addition, best practices in this field, including use of the 'Open Dialogue' model, necessitates having space and capacity to provide outside services and supports for these specific ED patients, who unlike a typical cardiac patient for example, need these other supports and services to be fairly and equitably treated. See https://www.samhsa.gov/sites/default/files/programs_campaigns/recovery_to_practice/crisis-open-dialogue-transcript-20160126.pdf, p 4 (ED waiting can be traumatizing to patients seeking mental health care in part due to the fact ED's are generally ill-equipped for these patient's needs.)

Prior to the Covid-19 pandemic, people regularly were boarded in EDs, including NMC's ED, for days or longer while awaiting placement on an inpatient psychiatric ward. Assuming our society returns to pre-pandemic practices, it is reasonable to assume that people will again be boarding for days or weeks. The needs of patients awaiting mental health treatment noted above are even more acute and imperative if they are boarding for days.

DRVT notes with approval that NMC's design includes windows for each of the mental health ED exam rooms, an uncommon design feature for ED examination rooms. The inclusion of windows implies an acknowledgment on NMC's part that patients seeking emergency mental health care in their new ED will benefit from this added feature, when perhaps other ED visitors, for example with broken arms or heart attacks, would not significantly benefit from the access to windows. DRVT suggests that this same assessment of the needs of patients seeking mental health care in the ED results in the conclusion that a community space is a critical aspect of appropriate, equitable care.

DRVT further suggests that, based on the existing floor plans, it would not be unduly costly or difficult to rearrange some space to afford an appropriate community/meeting space to these ED patients.

DRVT thanks the GMCB, DMH, NMC and the other stakeholders in this process for their consideration of these comments and suggestions that the CON be issued with appropriate conditions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed Paquin".

Ed Paquin
Executive Director
Disability Rights Vermont

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